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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

J&D RESTAURANTS, INC.
An Alaska Corporation,

Plaintiff,

v.

XPIENT SOLUTIONS, LLC,

Defendant.

No. 3:12-cv-_____

COMPLAINT

J&D RESTAURANTS, INC., through counsel, for its complaint against XPIENT Solutions, LLC, complains and alleges as follows:

1. Plaintiff J&D Restaurants, Inc. ("J&D Restaurants") is an Alaska corporation whose principal place of business is in Anchorage, Alaska.
2. Defendant XPIENT Solutions, LLC ("XPIENT") is a limited liability company formed in Delaware, whose principal place of business is at 11525 Carmel Commons Boulevard, Suite 100, Charlotte, North Carolina, 28226.
3. This court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332.

4. Venue in the United States District Court for the District of Alaska is proper pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b) because the events giving rise to Plaintiff's claims, and Plaintiff's damages, occurred in Anchorage, Eagle River, Kenai and Fairbanks, Alaska.

5. Plaintiff J&D Restaurants operates Carl's Jr. franchises in Alaska, including restaurants in Anchorage, Eagle River, Kenai and Fairbanks, Alaska.

6. To accept credit card payments at its restaurants, J&D Restaurants relies on a credit card payment processing system installed and maintained by XPIENT. To process orders and payments from its customers, J&D Restaurants relies on a point-of-sale system installed and maintained by XPIENT.

7. In marketing and selling its credit card payment processing system to J&D Restaurants, XPIENT represented and warranted to J&D Restaurants that its credit card processing system was secure.

8. From 2009 to 2010, cardholder breaches occurred in J&D Restaurants Carl's Jr. restaurants in Anchorage, Eagle River and Fairbanks. Persons or entities unaffiliated with J&D Restaurants were able to access customers' credit card information by accessing the credit card payment processing system installed and maintained by XPIENT.

9. The credit card payment systems were at risk of compromise for the following reasons attributable to XPIENT:

(a) the payment processing system was not properly firewalled or configured when originally installed by XPIENT;

- (b) the payment processing system was storing restricted cardholder data;
- (c) the payment processing system was not PA-DSS validated;
- (d) anti-virus software was not in place on all point-of-sale terminals;
- (e) weak or default usernames and passwords set up and maintained by XPIENT for remote access were in use; and
- (f) the remote access application was always on rather than accessible on an as-needed basis.

10. The aforementioned security deficiencies allowed an attacker to install malware that specifically targeted restricted cardholder data at J&D Restaurants' Fairbanks and Anchorage locations. The malware aggregated cardholder data on XPIENT servers at J&D Restaurants' locations in Anchorage, Eagle River, Kenai and Fairbanks. The malware was made to decrypt data from the XPIENT point-of-sale data files. Once decrypted, it was placed in a temporary plain text file and compressed and encrypted using RAR prior to being exported to the attacker's FTP server.

11. Compressed, encrypted, and password-protected RAR files were found on the affected systems. Once the passwords were identified and the encrypted files accessed, they were found to contain restricted cardholder data. System files also contained the address of an FTP site where the data was sent.

12. The credit card payment system provided and maintained by XPIENT allowed credit card data to be exported for the following reasons attributable to XPIENT:

(a) the firewall was not properly configured to restrict inbound or outbound traffic, allowing data to be easily exported;

(b) the malware installed on the system successfully aggregated restricted cardholder data;

(c) the malware was capable of exporting restricted cardholder data;

(d) the attacker had administrative-level access to the payment processing environment; and

(e) the payment processing environment was storing restricted cardholder data.

13. After the breaches which occurred from 2009 to 2010, XPIENT upgraded the software for J&D Restaurants' point-of-sale system. The software failed to function as represented by XPIENT. The software provided by XPIENT constantly crashed the point-of-sale system. The numerous defects in the software severely disrupted J&D Restaurants' ability to accept payment from its customers, and caused a substantial financial impact on J&D Restaurants.

14. In marketing and selling its credit card payment processing system, XPIENT warranted that the system was secure, and that XPIENT could maintain a secure credit card payment processing system. XPIENT breached this warranty by providing a credit card payment processing system that was not secure, and by failing to maintain a secure credit card payment processing system.

15. In marketing and selling the updated software for the point-of-sale system, XPIENT represented and warranted to J&D Restaurants that the software would be effective, efficient and reliable. XPIENT breached this warranty by providing software which repeatedly crashed, rendering J&D Restaurants' point-of-sale system inoperable.

16. J&D Restaurants has been damaged by XPIENT's breach of contract in an amount exceeding \$75,000, the exact amount to be proven at trial.

17. XPIENT had a duty to J&D Restaurants to provide and maintain a secure credit card payment processing system. XPIENT breached that duty by negligently failing to provide and maintain a secure credit card payment processing system.

18. XPIENT had a duty to J&D Restaurants to provide updated software which was effective, efficient and reliable. XPIENT breached that duty by negligently failing to provide and maintain software which allowed J&D Restaurants to operate its point-of-sale system reliably.

19. J&D Restaurants has been damaged by XPIENT's negligence in an amount exceeding \$75,000, the exact amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, for its requested relief, J & D Restaurants, Inc. prays as follows:

1. For an award of damages against XPIENT in an amount to be proven at trial.
2. For an award of attorneys' fees and costs incurred in bringing this matter.
3. For such other relief deemed just and equitable by the court.

Dated this 4th day of April, 2012.

REEVES AMODIO LLC
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J&D Restaurants, Inc.

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